IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

WP(C).No. 28759 of 2007(W)

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PETITIONERS:

1. K.I.ABRAHAM,.S/O. ITTYAVIRACH,
   AGED 55 YEARS, KARIKATTUPARAMBIL,KANJIRAPPILLY.

2. PUSHPA ABRAHAM,
   DO..DO...

3. RENJU ABRAHAM,
   DO...DO..

4. MAJO K. GEORGE,
   DO....DO.

BY ADV. SRI.RAJU K.MATHEWS

RESPONDENTS:

1. THE KOTTAYAM DISTRICT CO-OPERATIVE
   BANK LTD.,
   REPRESENTED BY ITS GENERAL MANAGER,
   KOTTAYAM.

2. THE AUTHORISED OFFICER UNDER THE
   SRFASI ACT,
   THE KOTTAYAM DISTRICT CO-OPERATIVE BANK LTD.,
   KOTTAYAM.

BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN, J.**

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**WP(C).No.28759 of 2007-W**

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Dated this the 24th day of October, 2007.

**JUDGMENT**

1. The petitioners challenge the action taken under the provisions of the SARFAESI Act. One of the contentions, based on Ext.P2, is that the security property is agricultural land. This plea is based on the basis of a fact that Ext.P2 is a certificate which apparently shows that it is a rubber plantation. The question whether a particular piece of land, though certified as plantation, is an agricultural land for the purpose of the SARFAESI Act, would be a mixed question of law and fact which is a matter that could fall for consideration before the Debts Recovery Tribunal while considering proceedings challenging the action taken by the bank under the SARFAESI Act. Not only that, as of now, no measure by

way of possession or other action has been taken. This means that without rushing to this Court the petitioners could have objected to the notice issued by the bank. That apart, it is apparent from Ext.P4 that the intention of the bank is to get at the outstandings and even drop proceedings, if the petitioners co-operate by repaying the outstandings.

2. Under the aforesaid circumstances, I do not find any ground to interfere with the impugned action. However, that will be without prejudice to the right of the petitioners to approach the bank by raising objections to the impugned action, if permissible in law. To aid such a process, it is directed that if the petitioners remit at the rate of Rs.3 lakhs per month payable on or before the 10th of every month, commencing from November, 2007, further action on the basis of the impugned proceedings will stand suspended. The petitioners shall thereby wipe off the entire demand under the SARFAESI Act and the

accruals thereon. However, if there is default in remitting any of the instalments as aforesaid, the benefits of this judgment shall stand recalled automatically and the bank will be at liberty to forthwith proceed with distress action, without further notice to the petitioners.

**THOTTATHIL B. RADHAKRISHNAN,**
**JUDGE.**

Sha/